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09/737,639	12/13/2000	Paul F. Austin	5150-50800	2283

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EXAMINER

BASOM, BLAINE T

ART UNIT	PAPER NUMBER
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2173

DATE MAILED: 07/22/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

8

# Office Action Summary

Application No.

09/737,639

Applicant(s)

AUSTIN, PAUL F.

Examiner

Blaine Basom

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 43,44 and 46-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 43,44 and 46-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### ***Response to Arguments***

Regarding the currently pending claims, the Applicants submit that Risberg et al., Microsoft Office 97, Nawaz et al., and Kodosky et al., as described in the previous Office Action, fail to teach each and every limitation currently presented in the pending claims. In response, the Examiner presents the teachings of Sprenger et al. (U.S. Patent No. 5,861,882), Carnahan et al. (U.S. Patent No. 6,560,557), and Bertram et al. (U.S. Patent No. 5,818,446), which as shown below, may be combined to read on the limitations currently claimed. The Applicants' arguments with respect to the currently pending claims have thus been considered, but are moot in view of the following new grounds of rejection.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 43 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 22 of copending Application No. 09/737528, and also over U.S. Patent No. 5,818,446, which is attributed to Bertram et al. (and hereafter referred to as "Bertram"). Although the conflicting claims are not identical, they are not patentably distinct from each other. In the instant application, claim 43 recites a memory medium comprising program instructions for configuring a graphical user interface (GUI) element to subscribe to [a] data source, wherein the program instructions are executable to implement: receiving user input specifying a data source, wherein the user input is received to a program development environment during creation of a program, and wherein said receiving user input specifying a data source comprises receiving user input specifying a uniform resource locator (URL) of the data source; programmatically selecting a GUI element after receiving the user input, wherein the GUI element is selected based on a data type of data provided by the data source; displaying the selected GUI element in the program after said programmatically selecting; and programmatically configuring the GUI element to receive and display data from the specified data source. Similarly, claim 22 of copending Application No. 09/737,528 expresses a method for configuring a graphical user interface (GUI) element to display data during execution of a graphical program, the method comprising: receiving user input specifying a data source; automatically selecting a GUI element to display data based on the data provided

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by the data source; displaying the selected GUI element; and automatically configuring the GUI element to receive and display data from the specified data source.

Consequently, claim 22 of copending Application No. 09/737,528 differs from claim 43 of the instant application in that claim 22 of the copending application doesn't express that the user input specifies a URL of the data source. However, it is understood that it would have been obvious, given the prior art of Bertram, to modify claim 22 of copending Application No. 09/737528, such that user input specifies a URL of the data source. For example, as shown below, Bertram teaches receiving user input specifying a URL. By similar reasoning claims 47, 48, 57, 58, 59, and 60 are also provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 22 of copending Application No. 09/737528, and also over the U.S. Patent of Bertram.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 59 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,818,446, which is attributed to Bertram et al. (and hereafter referred to as "Bertram"). In general, Bertram presents an Internet browser, which comprises a user interface which is

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modifiable to suite the preference of a user (see column 1, line 39 – column 2, line 33).

Specifically regarding claim 59, Bertram discloses that the browser receives user input specifying a data source and target, wherein the user input particularly specifies a uniform resource locator of the data source and target (see column 3, lines 26-61; and column 9, lines 5-24). A GUI element, specifically a browser window, is then programmatically selected and displayed, wherein the browser window is selected based on the data type of the data source, and is configured to receive and display data from the specified data source and also to publish data to the target (see column 6, line 29 – column 8, line 6; and column 9, line 43 – column 11, line 67). Lastly, Bertram discloses that such an Internet browser application may be executed on a computer comprising a display device, a processor, and a memory medium coupled to the processor (see column 4, lines 1-40). Such a computer executing the above-described Internet browser of Bertram is considered a system, like that recited in claim 59.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43-44, 46-58, and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,861,882, which is attributed to Sprenger et al. (and hereafter referred to as “Sprenger”), over U.S. Patent No. 6,560,557, which is attributed to Carnahan et al. (and hereafter referred to as “Carnahan”), and also over U.S. Patent No. 5,818,446, which is attributed to

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Bertram et al. (and hereafter referred to as “Bertram”). In general, Sprenger presents a system for testing devices, such as radio systems (see column 2, lines 34-49). Sprenger particularly discusses efficiently connecting a plurality of test elements, such as oscilloscopes, into various circuit configurations. To this end, Sprenger teaches connecting all such test elements, and the device to be tested, via a network (see column 3, line 20 – column 5, line 19). A computer connected to the network comprises a GUI by which the user may select icons representing the test elements, and connect and configure such icons into a graphical representation of a circuit (see column 6, line 51 – column 7, line 8; and column 8, lines 14-49). In response, the connected devices are automatically configured into the circuit specified by the user, and may serve as a source of information to the user (see column 8, line 36 – column 9, line 37).

Regarding claim 43, Sprenger presents a program development environment comprising a graphical user interface, by which a user configures various test elements connected to the user's computer into a circuit, thus creating a program which tests a device connected to the circuit. To this end, Sprenger teaches receiving user input specifying a data source, specifically by dragging, from an “Equipment Shelf” window onto a “Test Bench” window, an icon representing a test element data source (see column see column 6, line 51 – column 7, line 8; and column 7, lines 44-50). This icon is coupled with a plurality of other icons, similarly dragged onto the Test Bench window, thus creating a test circuit (see column 7, line 44 – column 8, line 49). Each data source may be associated with a GUI element, specifically an enlarged icon, which is displayed in the program, and which is programmatically configured to receive and display data from its associated data source (see column 8, line 50 – column 9, line 37). Thus concerning claim 43, Sprenger teaches receiving user input specifying a data source, wherein the

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user input is received to a program development environment during creation of a program; displaying a selected GUI element in the program; and programmatically configuring the GUI element to receive and display data from the specified data source. Sprenger, however, does not explicitly disclose that the user input specifying comprises a URL of the data source, or that the GUI element is programmatically selected based on a data type of data provided by the data source.

Like Sprenger, Carnahan discusses test elements, and specifically, discusses commanding and controlling such test elements (see column 1, lines 15-31). Regarding the claimed invention, Carnahan teaches coupling test elements to a server located over a network (see column 2, lines 14-43). The server provides a web page, and the user implements a common Internet browser to access this web page (see column 5, line 63 – column 6, line 59). This web page is used to issue commands and retrieve data from the test elements (see column 5, line 63 – column 6, line 59). Specifically, the user inputs a URL in order to specify such a server and its associated test elements (see column 4, line 59 – column 5, line 14).

It would have been obvious to one of ordinary skill in the art, having the teachings of Sprenger and Carnahan before him at the time the invention was made, to modify the system taught by Sprenger, such that the test elements are coupled to a server, and such that the GUI of the elements is provided by this server and accessed by a common Internet browser. It would have been advantageous to one of ordinary skill to utilize such a combination, because a plurality of users from different locations would be able to access the test elements, as is demonstrated by Carnahan. Thus this combination of Sprenger and Carnahan teaches receiving user input specifying a data source, namely a server, wherein the user input is received to a program



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development environment during creation of a program, and wherein this input specifies a URL of the server; displaying a selected GUI element, namely a browser window; and programmatically configuring the GUI element to receive and display data from the specified data source. This combination, however, does not explicitly teach programmatically selecting the GUI element after receiving the user input, wherein the GUI element is selected based on a data type of data provided by the data source.

Like Sprenger and Carnahan, Bertram discusses accessing data from over a network, specifically via a common Internet browser (see column 1, lines 38-56). Regarding the claimed invention, Bertram teaches programmatically selecting a GUI element, namely browser window and its associated controls, based on the type of data received and displayed by the browser (for example, see column 6, line 29 – column 8, line 29).

It would have been obvious to one of ordinary skill in the art, having the teachings of Sprenger, Carnahan, and Bertram before him at the time the invention was made, to modify the browser taught by Sprenger and Carnahan, such that in response to inputting a URL, a browser window is programmatically selected and displayed, and configured to receive data from the source specified by the URL, as is done by Bertram. It would have been advantageous to one of ordinary skill to utilize this combination because such a provision allows the browser window to have a distinct look and feel for the particular web pages provided by the test element server, thus providing a more distinct interface, as is taught by Bertram. Thus this combination of Sprenger, Carnahan, and Bertram teaches receiving user input specifying a data source, namely a server, wherein the user input is received to a program development environment during creation of a program, and wherein the user input specifies a URL of the server; programmatically

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selecting a browser window after receiving the input, wherein the window is selected based on a data type of data provided by the server; displaying the selected browser window in the program after said programmatically selecting; and programmatically configuring the browser window to receive and display data from the specified server. Carnahan discloses that such teachings may be implemented on a computer readable medium comprising program instructions (see column 9, line 44 – column 10, line 10). Such a computer readable medium implementing the above-described teachings of Sprenger, Carnahan, and Bertram, is considered a computer readable medium, like that recited in claim 43.

Regarding claim 44, the above-described combination of Sprenger, Carnahan, and Bertram teaches programmatically selecting and displaying a browser window in response to specifying a data source. As shown above, the user specifies a data source by entering a URL. In response to selecting and displaying the browser window, the window automatically receives and displays data from the data source, as is further shown above. Thus the browser window is automatically configured to receive and display data without user programming and without the user input specifying source code.

As per claim 46, Bertram teaches programmatically selecting a browser window, and its associated controls, based on a file extension specified by a URL entered by the user (see column 7, line 36 – column 8, line 6). Thus the above-described combination of Sprenger, Carnahan, and Bertam is understood to teach programmatically selecting a GUI element based on a file extension specified by a user-entered URL, as is expressed in claim 46.

Concerning claims 47 and 48, Bertram discloses that a browser window, and its associated controls, may be programmatically selected in response to receiving and analyzing

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data from a particular data source (see column 7, line 36 – column 8, line 16). More specifically, Bertram discloses that a browser window may be programmatically selected by determining a window operable to display particular content received from the data source (see column 8, lines 7-16). It is therefore understood that the above-described combination of Sprenger, Carnahan, and Bertram teaches: receiving data from a data source; programmatically analyzing the received data; and programmatically determining a GUI element operable to display the received data. Additionally, and specifically concerning claim 48, it is understood that the data received from a data source may be in a self-describing format. For example, Bertram discloses that data from a source specified by a URL may have a registered content type, such as “text/html,” which describes the content provide by the source (see column 8, lines 7-16).

Referring to claim 49, the data source of the above-described combination of Sprenger, Bertram, and Carnahan is comprised in a server computer remotely located from the user’s computer, wherein the user’s computer is operable, via an Internet browser, to connect to the server computer over a network, as is described above. Therefore, it is understood that the user’s browser window is programmatically configured to connect to the server computer and receive and display data from the server computer.

As per claim 50, the browser window is automatically included in a user interface associated with a program in development. Specifically, as is described above, the browser window displays the GUI of the elements of Sprenger, which are included within a program development environment.

In reference to claim 51, the program described by Sprenger is a graphical program comprising a block diagram and a user interface (for example, see figure 4, and its associated

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description in column 8, line 50 – column 9, line 37). Specifically, the block diagram represents a test circuit, and comprises a plurality of connected nodes, i.e. icons, which visually indicate functionality of the graphical program (see figure 3, and its associated description in column 7, line 44 – column 8, line 49). As described above, the interface of each of these elements is accessed and displayed via an Internet browser. The user interface of this program is therefore considered to include the browser window, which is programmatically selected based on the data received by the browser, as is described above.

Concerning claim 52, Carnahan discloses that the Internet browser may receive data from a server using HTTP (see column 2, lines 14-43; and column 4, line 59 – column 5, line 5). The data source of the above-described combination of Sprenger, Carnahan, and Bertram, is thus understood to be an HTTP server, as recited in claim 52.

As per claims 53 and 54, Sprenger discloses that a user may specify a data source and a data target, whereby the data source is the same as the data target, and whereby data is received and displayed from the data source, and published to the data target (see column 8, line 50 – column 9, line 37). Carnahan further teaches that a GUI element, specifically an Internet browser window, may be associated with such a source and target, so that it is configured to receive and display data from the source, and publish data to the target (see column 5, line 63 – column 6, line 59). The above-described combination of Sprenger, Carnahan, and Bertram is thus considered to teach a memory medium, like that recited in claims 53 and 54.

As per claims 55 and 56, the data received from the data source of Sprenger, Carnahan, and Bertram is live data, specifically measurement data, which is received from an instrument, namely a test device (for example, see column 8, line 50 – column 9, line 37 of Sprenger).

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Concerning claims 57 and 58, the above-described teachings of Sprenger, Carnahan, and Bertram may be implemented by a computer-readable medium comprising program instructions (for example, see column 9, line 44 – column 10, line 10 of Carnahan). Such a computer readable medium implementing the above-described teachings of Sprenger, Carnahan, and Bertram, is considered a computer readable medium, like that recited in claims 57 and 58.

Regarding claim 60, the teachings of Sprenger, Carnahan, and Bertram, as described above in the rejection for claim 43, are considered to constitute a method, like that recited in claim 60, which is for configuring a graphical user interface element to publish or subscribe to data.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blaine Basom whose telephone number is (703) 305-7694. The examiner can normally be reached on Monday through Friday, from 8:30 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca can be reached on (703) 308-3116. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

btb



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